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Supreme Court, U.S.
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No. 09-40

In The
Supreme Court of the United States

ILLINOIS INVESTMENT TRUST NO. 92-7163,
Petitioner,

v.

AMERICAN GRADING COMPANY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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SUPREME COURT RULE 29.6 DISCLOSURE STATEMENT

Respondent American Grading Company has no parent corporation. No publically held company owns any stock in American Grading Company.

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SUMMARY OF REASONS FOR DENYING PETITION

The *Petition for Writ of Certiorari* (the "Petition") does not meet any standard for review by this Court. In fact, there is no good faith basis for the Petition, which is undoubtedly why Illinois Investment Trust No. 92-7163 (the "Petitioner") does not even attempt to explain how the matters it raises satisfy the stringent standards for review by this Court.

The issues argued in the Petition – primarily alleged erroneous factual findings by the bankruptcy court – do not involve a conflict among court decisions, a departure from the usual course of judicial proceedings, or an area of federal law that has not been, but should be, settled by this Court. Nor are the underlying issues in this case sufficiently important to warrant this Court's interference with the bankruptcy court's factual findings, which were affirmed by both the District Court for the Northern District of Illinois and the Seventh Circuit Court of Appeals.

In fact, this case does not even involve interpretation or application of a federal statute. This is a breach of contract case that simply does not belong before this Court. Petitioner's indifference to the waste associated with its frivolous Petition is objectionable. Although Respondent American Grading Company ("American Grading") believes that sanctions are warranted under Supreme Court Rule

42(2), it will not compound the burdens on this Court by filing a motion seeking such relief.

SUPPLEMENTARY BACKGROUND INFORMATION

This case involves Petitioner's attempt to acquire rights under an agreement between Resource Technology Corporation ("RTC") and American Grading in RTC's bankruptcy case. Petitioner contends that all three courts below erred in finding that American Grading properly terminated the agreement, and therefore, that there were no contract rights left for Petitioner to acquire.

I. THE AGREEMENT BETWEEN RTC AND AMERICAN GRADING

American Grading is the owner of the McCook Landfill (the "Landfill"). Pet. App. at 2a.[1] On December 27, 1995, American Grading and RTC entered into an agreement (the "Agreement"), pursuant to which RTC would install and operate a gas collection and conversion system at the Landfill. Pet. App. at 2a; AG App. at 1b *et seq*. Among other things, the Agreement required RTC to pay a $100,000 advance royalty payment on January 1st of each year and to operate at the Landfill in compliance with all

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[1] Citations in this brief are formatted as follows: citations to the *Petition for Writ of Certiorari* will use the abbreviation "Pet."; citations to the Appendix attached to the *Petition for Writ of Certiorari* will use the abbreviation "Pet. App." Citations to American Grading's Appendix, attached hereto, will use the abbreviation "AG App." Each abbreviation will be followed by the page number(s) cited.

applicable environmental laws. Pet. App. at 3a; AG App. at 7b.

The Agreement also contained a termination clause that provided, in relevant part:

> TERMINATION. If either party or its assigns defaults or persistently fails or neglects to perform any duty or obligation under this Lease, the other party may terminate the Lease by giving written notice of its intention to terminate. If the responsible party fails to correct the default within thirty (30) days after being given notice, the other party may without prejudice to any other remedy, terminate the Lease.

Pet. App. at 3a.

II. RTC'S BANKRUPTCY CASE

RTC was involuntarily placed into bankruptcy in November 1999. Thereafter, as a result of RTC's consent, the matter proceeded as a voluntary chapter 11 case. Pet. App. at 3a. In 2002, RTC obtained an operating permit from the Illinois Environmental Protection Agency for the planned gas collection and control system. Pet. App. at 3a. However, RTC was doing little or no business at the Landfill during this time. Pet. App. at 4a.

In September 2005, the case was converted to a chapter 7 proceeding, and a chapter 7 trustee (the "Trustee") was appointed. Pet. App. at 4a. The Trustee requested access to the Landfill in December 2005, and American Grading provided him with the

keys to the Landfill on January 5, 2006. Pet. App. at 4a.

III. THE DISPUTE OVER EXTENSION OF THE AGREEMENT

The original term of the Agreement was ten years and was set to expire on December 27, 2005. RTC had the option to renew the Agreement by giving written notice. Pet. App. at 2a. The Trustee, however, never sent a renewal notice. American Grading therefore believed the Agreement had expired by its own terms, and on January 19, 2006, it sent a request to the Trustee to return the keys. Pet. App. at 5a. The Trustee did not return the keys. Pet. App. at 5a.

In March 2006, the Trustee entered into a settlement with certain of RTC's creditors, referred to as the "Greenblatt Entities." Pet. App. at 4a. Under the settlement, the Greenblatt Entities had the right to designate certain contracts held by RTC that the Trustee would then be required to assume and/or assign to the Greenblatt Entities or their designees. Pet. App. at 4a. Following designation of the Agreement, the Trustee moved to assign the Agreement (among other agreements) to Petitioner, as the Greenblatt Entities' designee, under Section 365 of the Bankruptcy Code. Pet. App. at 4a. American Grading objected to the Trustee's Motion on the grounds that, *inter alia*, the Agreement had terminated because the Trustee had failed to timely renew the Agreement. Pet. App. at 5a. The Greenblatt Entities and the Trustee, on the other hand, claimed that the Agreement had been extended prior to appointment of the Trustee. Pet. App. at 5a.

The bankruptcy court set a trial for November 21, 2006, on the question of whether the Agreement had been properly extended. Pet. App. 5a. Shortly before the trial date, American Grading's counsel withdrew, and American Grading was not represented by counsel at the trial. Pet. App. at 5a. As a result, the bankruptcy court ruled "by default" that the Agreement had been extended for another five-year period, and set a trial on the question of whether the Agreement could be assigned under Section 365 of the Bankruptcy Code. Pet. App. at 5a-6a.

IV. TERMINATION OF THE AGREEMENT

After retaining new counsel, American Grading sought relief from the automatic bankruptcy stay under Section 362 of the Bankruptcy Code in order to send RTC and the Trustee two notices of default, one on December 29, 2006 and another on January 12, 2007, in connection with the numerous ongoing breaches under the Agreement. Pet. App. at 6a. For example, the RTC estate failed to pay the $100,000 advance royalty payment that came due on January 1, 2006. Pet. App. at 4a. In addition, in March 2006, the Trustee abandoned RTC's operating permit for the Landfill, terminated all of RTC's employees, and ceased all operations at the Landfill. Pet. App. at 5a. Thus, RTC was not operating, and could not legally operate, at the Landfill in compliance with applicable environmental laws. Pet. App. at 5a. These breaches were not cured within thirty days, as required by the Agreement, and American Grading issued a notice of termination of the Agreement on January 31, 2007. Pet. App. at 6a.

Because a trial was already set for April 2007 on the question of whether the Agreement could be assigned to Petitioner, American Grading filed a motion seeking to add the question of whether the Agreement was properly terminated to the matters to be tried in April. AG App. at 23b *et seq*. The bankruptcy court granted this motion and entered an order (the "Trial Order") explicitly providing that the "Court will consider at trial whether the contract to be assumed and assigned has been terminated." AG App. at 29b.

Following a two-day trial in April 2007, the bankruptcy court found that the Agreement was properly terminated by American Grading because the RTC estate failed to cure multiple breaches, including the failure to pay the $100,000 advance royalty. Pet. App. at 7a, 30a-31a. As a result of the termination, the RTC estate necessarily could not assign the Agreement to Petitioner under Section 365 of the Bankruptcy Code. Thus, the bankruptcy court never reached the question of whether the requirements of that section were satisfied. Pet. App. at 30a-31a. The Petition therefore contains a critical misstatement when it represents that the statute involved in this case is the Bankruptcy Code. Pet. at 1. Neither Section 365 of the Bankruptcy Code nor any other section had anything to do with the Bankruptcy Court's determination that the Agreement was terminated.

REASONS FOR DENYING THE PETITION

Expressly disregarding Supreme Court Rule 10, Petitioner provides no "compelling reasons" for granting its Petition. This Court has stated it will not

grant a writ of certiorari merely to benefit the particular litigants in the case. *See Rice v. Sioux City Mem'l Park Cemetery, Inc.*, 349 U.S. 70, 73 (1955). Instead, certiorari will only be granted in "cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties. . . ." *Layne & Bowler Corp. v. W. Well Works, Inc.*, 261 U.S. 387, 393 (1923). Despite these governing standards, Petitioner's alleged errors are based on the bankruptcy court's factual findings and interpretation of its own Trial Order. The settlement of these issues, which are not based on any underlying matters of public importance, would only benefit the particular litigants of this case. Neither of these alleged errors warrant review by this Court.

I. PETITIONER'S ASSERTED ERRORS BASED ON FINDINGS OF FACT DO NOT WARRANT REVIEW.

The factual findings upon which Petitioner bases its Petition do not comport with the "character of the reasons the Court considers" when determining whether to grant certiorari. *See* Sup. Ct. R. 10. Examples of such character include conflict among court decisions, a departure "from the accepted and usual course of judicial proceedings," or "an important question of federal law that has not been, but should be, settled by this Court." *Id.* at (a)-(c); *see also, e.g.*, *Hubbard v. United States*, 514 U.S. 695 (1995) (granting certiorari because Court of Appeals decision created a split in the Circuits).

Although these examples are "neither controlling nor fully measuring the Court's discretion," Supreme Court Rule 10 specifically states that "a petition for a

writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings. . . ." Sup. Ct. R. 10. Likewise, this Court will typically deny certiorari for issues based solely on the construction of contracts. Eugene Gressman, *et al.*, *Supreme Court Practice* § 4.14 (9th ed. 2007). This Court has stated that it does not usually grant certiorari to "review evidence and discuss specific facts," *United States v. Johnston*, 268 U.S. 220, 227 (1925), or interfere with Circuit Court of Appeals decisions that depend on interpretation of factual circumstances, *Fed. Trade Comm'n v. Am. Tobacco Co.*, 274 U.S. 543, 544 (1927). The usual rule of noninterference should apply to this case because the Seventh Circuit's decision was based solely upon its review of the facts. *See generally* Pet. App. at 1a-13a.

Although Petitioner suggests that this case involves Section 365 of the Bankruptcy Code, Section 365 of the Bankruptcy Code was not meaningfully at issue below. *See* Pet. at 3, 11. In fact, the bankruptcy court never reached the question of whether the requirements for assignment under Section 365 were satisfied because it decided that the very contract requiring such determinations no longer existed. *See* Pet. App. at 30a-31a; *see also* 11 U.S.C. § 365. Moreover, Section 365 played no role in the decisions of either the district court or the Seventh Circuit. *See generally* Pet App. at 1a-28a. Indeed, Petitioner does not even mention Section 365 in the "Questions Presented" section of its Petition. Pet. at (i).

Further, the issues stated in the Petition are not sufficiently important to warrant a grant of certiorari. Typically, cases in which certiorari is granted involve important questions arising under the Constitution or

other important federal laws. *See, e.g.*, *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) (granting certiorari to determine whether a punitive damages award against the defendant insurance company violated the Due Process Clause of the Fourteenth Amendment). A private contract dispute, like that presented here, does not touch on any important public issue.

II. THE CONCURRENT FINDINGS OF THE THREE LOWER COURTS SHOULD NOT BE DISTURBED BECAUSE THE FINDINGS WERE NOT ERRONEOUS.

Even if the factual issues raised by Petitioner could potentially warrant review, this Court has observed that because it is "a court of law . . . rather than a court for correction of errors in fact finding, [it] cannot undertake to review concurrent findings of fact by [ ] courts below in the absence of a very obvious and exceptional showing of error." *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 841 (1996) (quoting *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949)). Likewise, this Court has noted that decisions resting on concurrent findings "are not to be disturbed unless plainly without support." *Gen. Talking Pictures Corp. v. W. Elec. Co.*, 304 U.S. 175, 178 (1938). Petitioner has not met this high burden.

A. The Lower Courts Properly Found That The Contract Was Terminated.

The bankruptcy court's factual findings, which were affirmed by both the district court and the Seventh Circuit, do not constitute clear error. The record amply supports the bankruptcy court's determination

that the Agreement was materially breached and therefore properly terminated.

Petitioner maintains that American Grading "waived" the argument that failure to pay the advance royalty on January 1, 2006, was a breach of the Agreement as a result of a motion *in limine* in which American Grading stated that its termination was based on events occurring after March 26, 2006. Pet. at 8. All three lower courts, however, agreed that the failure to pay the 2006 advance royalty constituted an ongoing violation. Pet. App. at 9a, 11a. Specifically, the Seventh Circuit stated that the "tender [of the 2006 royalty] never happened, and so the debt remained outstanding at all relevant times." Pet. App. at 9a.

The lower courts also agreed that the failure to pay the 2006 advance royalty constituted a material breach of the Agreement. Pet. App. at 9a. The bankruptcy court did not commit clear error in making this determination because payment of advance royalties was the "principal form of consideration due from RTC under the Agreement." Pet. App. at 20a. In agreeing with the bankruptcy court's findings, the Seventh Circuit reasoned that "the advance royalty obligation functioned as a form of security for American Grading." Pet. App. at 10a. It is therefore more than reasonable to infer that American Grading would not have entered into the Agreement absent that security provision. Given that Petitioner itself states that the materiality test is "whether the breach is of . . . such importance that, if anticipated in advance, the contract would not have been entered into," Pet. at 10 (citing *Galesburg Clinic Ass'n v. West*, 706 N.E.2d 1035, 1037

(Ill. App. Ct. 1999)), the failure to pay the advance royalty was a material breach of the Agreement.

B. The Lower Courts Properly Found That The RTC Estate's Nonperformance Was Not Excused.

Petitioner attempts to excuse the RTC estate's nonperformance under the Agreement on the grounds that American Grading barred access to the Landfill, but physical access to the Landfill site had no impact on the nonpayment of the advance royalty that came due on January 1, 2006, which payment remained unpaid. Pet. App. at 23a. Because that nonpayment alone justified termination of the Agreement, the Seventh Circuit found it unnecessary to reach the issue of whether RTC's remaining defaults were excused. Pet. App. at 11a.

The bankruptcy court, however, did address the issue, and it correctly found that American Grading did not prevent RTC from performing under the Agreement. Pet. App. at 25a. The district court affirmed the bankruptcy court's ruling on several grounds. First, the Trustee retained the keys to the Landfill, and he could have obtained a court order allowing him to access the site had he really wanted to gain access to the Landfill. Pet. App. at 23a. Second, although American Grading ostensibly forbade access when renewal of the Agreement was in dispute, American Grading did nothing to prevent access after the Court ruled the Agreement had been extended. Pet. App. at 24a. Finally, the Trustee admitted he had not authorized any activity at the Landfill during the relevant time period, nor that he had any intention of doing so. Pet. App. at 24a-25a. Based on these

circumstances, the bankruptcy court did not commit clear error in determining that RTC's performance was excused.

III. THE BANKRUPTCY COURT CORRECTLY INTERPRETED ITS OWN TRIAL ORDER.

Petitioner insists that the bankruptcy court misinterpreted its own Trial Order by allowing American Grading to raise the termination issue at the April 2007 trial. Pet. at (i), 11; Pet. App. at 7a. Perhaps acknowledging the weakness of its own argument, Petitioner devotes only a single paragraph in its Petition to this inexplicable contention. *See* Pet. at 11. Moreover, Petitioner contradicts its own argument by stating in the Petition that "the Bankruptcy Court entered an order expanding the scope of the trial to include the Appellee's alleged defaults *and the termination issue* . . . ." Pet. at 4 (emphasis added).

As the district court and the Seventh Circuit concluded, not only was the bankruptcy court in the best position to interpret its own order, it chose the "far more logical" interpretation. Pet. App. at 12a. The point of the April 2007 trial was to determine whether the Trustee could assign the Agreement to Petitioner. Pet. at 3. As a matter of logic, the bankruptcy court had to determine whether the Agreement was terminated before it could decide whether the Agreement could be assigned to Petitioner under Section 365 of the Bankruptcy Code. Petitioner's argument that the Trial Order actually prohibited the termination issue from being raised ignores the entire purpose of the trial. Petitioner's illogical argument fails to show that the bankruptcy

court abused its discretion when it allowed the termination issue to be raised.

CONCLUSION

Petitioner has not met any standard for grant of writ of certiorari in this case. Petitioner's asserted errors are based primarily on factual findings upon which all three lower courts agreed, and that do not implicate important federal or constitutional law. Further, the bankruptcy court's interpretation of its own procedural order does not present a "compelling" need for review by this Court.

For all of the foregoing reasons, American Grading respectfully requests that this Honorable Court deny the Petition.

DATED: August 10, 2009

Respectfully submitted,
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APPENDIX

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LEASE

This lease (the "Lease) is entered into this 27th day of December, 1995, (the "Effective Date"), by and between Resource Technology Corporation, a Delaware corporation (the "Lessee"), and American Grading Company, a Delaware corporation (the "Lessor").

The Lessee and the Lessor are hereinafter referred to as the parties to this Lease.

RECITALS

WHEREAS, Lessor represents that it is the sole right and power to grant the right to collect, extract and remove (for a period of up to twenty-five years) landfill gas from certain real estate (hereafter "Premises") in Cook County, consisting of approximately 90 acres, more or less, which it owns.

WHEREAS, Lessor desires to grant to Lessee the exclusive right to develop and install a landfill gas-to-energy conversion project at the Premises ("the Project"), and the exclusive right to collect, extract and remove landfill gas from the Premises ("Landfill Gas"), and to convert all or any portion of such Landfill Gas into electrical energy or any other form of energy for the purpose of selling or distributing such gas or electricity or other form of energy; and

WHEREAS, Lessee desires to have the exclusive right to develop and install the Project and to collect, extract and remove Landfill Gas from the Premises and to convert all or any portion of such Landfill Gas

into electrical energy or any other form of energy for the purpose of selling or distributing such gas or electrical energy or other form of energy;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **INCORPORATION OF RECITALS.** The recitals above stated are herein incorporated as if specifically stated.

2. **ROYALTIES.** Lessee shall pay to Lessor and/or Lessor's designee, a royalty amount of ten percent (10%) of Gross Sales. The term "Gross Sales" as used herein shall mean the total amount of fees, or proceeds (a) received by Lessee or any assignee of any portion of Lessee's rights under this Lease from actual sales of energy generated from Landfill Gas and produced as a direct result of the use of the Premises, and (b) received by Lessee or any assignee of any portion of Lessee's rights under this Lease from actual sales of Landfill Gas to a purchaser other than Lessee. In the event that value in the form of barter or "in kind" services is received as a payment for energy or gas, such barter or "in kind" services shall be valued at fair market value for purposes of computing the amount of Gross Sales.

Royalties shall be paid as follows: (a) on January 1, 1996, and each January 1, thereafter during the life of the contract, Lessee shall pay to Lessor the sum of $100,000.00, as an advance royalty, and (b) once the monthly royalty exceeds the advance payment, royalties shall be paid on a monthly basis by not later

than the 30th day of the month immediately following the month for which the royalty was earned and shall be mailed or otherwise delivered to Lessor's office at P.O. Box 253, Lyons, IL 60534 or such other place as Lessor shall designate to Lessee in writing. The Lessee shall render good faith monthly and calendar year summary statement of account. Such summary statement shall be reviewed by the Lessee's accounting firm and delivered to the Lessor within 30 days of the end of the period, and shall include all items pertinent to the entire preceding period. Lessee shall provide Lessor with reasonable access to Lessee's books and records in order to al Lessor to audit the accuracy of Lessee's statements of account.

Lessee shall also pay to Lessor the methane gas used by Lessee in the operation of its extraction and removal processes, the same to be measured and reported in writing, at the 30th day of each month, to Lessor, and to pay to Lessor for such wage 8% of electrical load.

3. **GRANT.** Lessor hereby grants to Lessee at all Lessee's costs, subject to the terms and conditions of this Lease, the sole and exclusive right to (a) develop and construct the Project at the Premises; (b) collect, extract and/or remove Landfill Gas from the Premises; (c) sell and/or distribute all or any portion of such Landfill Gas to any procurer of electrical energy or other form of energy, or to any other person or entity; (d) produce, at the Premises, electrical energy or any other form of energy, from such Landfill Gas; (e) sell or distribute, from the Premises, all or any portion of the electrical energy or other form of energy produced from such Landfill Gas; and (f) do, at the Premises, all things necessary to carry out such development and

construction o the Project and such collection, extraction, removal, sale and distribution of Landfill Gas and such production and sale and distribution of electrical energy or other form of energy, subject to the terms of this Lease. Lessee agrees to construct and operate the Project and all appurtenances thereto and to perform its rights and obligations under this Lease in such a manner as not to interfere with the disposal operations, closure of post-closure care of Lessor's landfill located on the Premises.

4. **REPAYMENT TO STATE OF ILLINOIS.** The parties agree that Lessee has the sole obligation and responsibility to reimburse the State of Illinois pursuant to 220 ILCS 5/8-403.1 and Title 83 Illinois Administrative Code Ch. I, Sec. 445.10-445.80 now in effect or as hereafter amended. Lessee agrees to hold Lessor harmless from any action by the State of Illinois to recover such payments from Lessor. Lessee agrees that it will purchase investment grade bonds, as defined by Standard and Poor's or Moody's, to secure the reimbursement of the tax credits accumulated pursuant to 220 ILCS 5/8-403.1 as a result of the Project. Lessee agrees that the total value of the bonds so purchased shall never be less than the amount of said accumulated tax credits. Lessor shall have access to Lessee's books and records which pertain to said bonds and accumulated tax credits to verify compliance with this Paragraph 4. Failure to comply with this Paragraph 4 shall entitle Lessor to its rights under Paragraph 16 herein. Lessee shall provide Lessor with a copy of the reimbursement schedule once it is approved by the State of Illinois. The obligations imposed under this Paragraph 4 shall survive the expiration or termination of this Lease until the State of Illinois is reimbursed in full.

5. **TERM.** (a) The initial term of this Lease shall commence on the Effective Date and shall expire on the date ten (10) years after the Effective Date, or on such earlier occurrence of a Termination Event or other date on which this Lease is terminated in accordance with its provisions. The Lessee shall have the right to extend the term of this Lease for up to three (3) consecutive periods of five (5) years each, following the expiration of the initial 10-year period, provided that this Lease has not been terminated prior to such extension. The Lessee shall give written notice by certified or registered mail to the Lessor of Lessee's intent (if any) to extend this Lease not less than ninety days prior to the expiration of the preceding period. In the event that this Lease is extended beyond the initial 10-year period, all provisions contained herein shall continue in effect. (b) Ninety (90) days before termination of this Lease, for any reason, shall (i) dismantle and remove all of its above-ground equipment and components and other above-ground personal property at the Premises at Lessee's sole cost, and (ii) restore the constructed areas of the Premises to the same condition as Lessee found such areas prior to any field testing or systems installations except that any equipment or material installed which is more than three (3) feet below grade may remain in place at the option of the Lessee. In restoring such constructed areas, Lessee shall backfill, cap the top and bring to grade each gas well, using methods and materials accepted in writing by Lessor, pursuant to a plan of removal and restoration delivered to Lessor by Lessee.

6. **ACCESS TO PREMISES.** Subject to the terms and conditions of this Lease, Lessee shall have the right to full access to the Premises at any and all times for the purposes outlined in this Lease, except that

such right shall not include (i) access to buildings owned or occupied by Lessor or Lessor's landfill operator, without their prior respective written consent, and (ii) access to the fill areas of the landfill without final cover, unless Lessor gives prior written consent. Lessor shall have the right to inspect the Project at any time. Inspection by Lessor should not be construed as a representation by Lessor that there has been compliance with the design plans or a waiver of any right Lessor may have against Lessee or any other party for non-compliance with the terms of this Lease. Lessor shall have the right to obtain the services of such professional consultants as Lessor may deem necessary, at Lessor's expense, to assist Lessor in inspecting the project or construction of test wells, or to otherwise protect the interest of the Lessor under the Lease. Lessee has equipment and/or processes that are proprietary in nature, and Lessor will obtain from the professional consultant, before inspection, an executed non-disclosure agreement recognizing such equipment or processes as proprietary to Lessee. Each of the parties agrees not to interfere with the business operations of the other at the Premises. Each party of this Lease shall fully advise the other in advance of any changes in operation, maintenance, expansion programs, or other factors which may affect the business of the other at the Premises. If any party takes any action, refrains from taking any action, or undertakes any change in operations, maintenance or expansion programs or other factors, and thereby materially and detrimentally affects the business operations of the other party at the Premises, then if such detrimental event is not cured within thirty (30) days after receipt of written notice describing the nature of the detriment and its cause, the failure to

cure such detrimental event within such thirty day period shall be a Termination Event.

7. **DEVELOPMENT OF PREMISES.** The Lessee will pursue field testing, licenses, permits and sale contracts in an expeditious manner an at its own expense. Construction and operation of the Project is contingent on Lessee's field tests, and procurement of all necessary licenses, permits and sales contracts. Lessee shall have six (6) months from the date of this contract to complete its field test and to procure all necessary licenses, permits, and sale contracts. Failure to complete field tests or to submit all licenses, permits, and sales contracts within six (6) months from the date of this contract shall constitute a default on the part of Lessee and shall entitle Lessor to its rights under Paragraph 16 herein. Construction of the Project shall be at Lessee's sole expense and shall commence no later than the end of the second quarter of 1996. Lessee shall construct the Project in an expeditious manner, and shall complete said construction by the end of 1996, subject to EPA approval. Failure to complete said construction by the end of 1996, unless extended by written agreement between the parties, shall constitute a default on the part of Lessee, and shall entitle Lessor to its rights under Paragraph 16 herein. Once construction is completed, Lessee shall operate the Project at its own expense and in such a manner as to reduce the levels of landfill gas at all times to a level in accordance with the regulations prescribed by the Illinois Environmental Protection Agency ("IEPA"), now in effect or as hereafter amended. Once the Project is completed and/or operational, any lapse of six (6) months in production shall constitute a default on the part of Lessee and shall entitle Lessor to its rights

under Paragraph 16 herein. Lessor may, in its sole discretion, extend any date herein, by written amendment to this Lease. Lessor shall approve in writing the location and design of the Project and any associated test wells before any construction is commenced. Lessee shall notify Lessor at least one week prior to the commencement of any construction. The Lessee, at its option, and upon 30 days written notice, may also abandon this Lease. Such notice shall be served upon Lessor by certified mail. Such abandonment will constitute a Termination Event. Construction of the Project shall be in compliance with the Construction Quality Assurance (CQA) Program which has been approved by the IEPA, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference. Lessee shall provide a CQA officer at its expense. If the IEPA requires the CQA to be amended as a result of Lessee's Project, or test well construction, Lessee shall amend the CQA at its expense. Lessor must approve in writing any such amendments before they are submitted to the IEPA.

The Lessee, and each contractor, material dealer and any other trade who provides labor, material or services of any kind, or who does work of any kind in connection with the project must comply at all times in all respects with all applicable provisions of all federal, state, and county of Cook laws, ordinances and statutes.

The construction of this project shall comply and meet all requirements of the Occupational Safety and Health (OSHA) of 1970, Public Law No. 91-596, 91st Congress, S-2193, December 29, 1970, including all Amendments and Bulletins.

The Lessee and its contractors shall take all reasonable precautions, but in each case only to the extent arising out of or caused by actions of the Lessee or its agents, for the safety of, and shall provide all reasonable protection of damage, injury, or loss to:

a. All employees on the work and all other persons who may be affected nearby;

b. Other property at the landfill or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadway structures, and utilities not designated for removal, relocation or replacement in the course of construction.

The Lessee shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities and properties.

If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Project or test wells to be inspected, tested or approved, the Lessee shall bear all costs of such inspections, tests or approvals required by the public authorities. The Lessee will secure required certificates of inspection, testing or approval required herein and deliver them to Lessor.

8. **LESSEE'S RESPONSIBILITIES.** With respect to Lessee's conduct of business operations at the Premises, throughout the term of its Lease:

a. Lessee shall be responsible, at its own expense, for obtaining all necessary governmental permits, for the installation of the collection and extraction system and gas-to-energy conversion systems and Lessee's collection, extraction, removal and/or generation activities. In addition, Lessee shall be responsible for obtaining, at its sole expense, all necessary equipment and materials for the construction, implementation, and continuous operation of the Project. Lessee shall not be responsible for any fees or permits for anything not pertaining to its collection, extraction, removal and/or gas-to-energy conversion activities. Lessee shall operate the Project, including gas management system, landfill gas processing and disposal system, which includes proper transportation and disposal of condensate at its sole expense and in accordance with all necessary governmental permits and with all applicable laws and regulations now in effect, or as hereafter amended.

b. Lessee shall be responsible for the maintenance of utility lines, and other equipment and materials, installed at the Premises for Lessee's benefit and shall also be responsible for maintaining the general appearance of that portion of the Premises used for extraction of Landfill Gas and gas-to-energy generation, specifically in and around the wellheads, pipelines, generators and utility lines. Lessee also agrees to pay for any utilities it uses. Lessee shall be responsible, at its sole expense, for the landfill gas monitoring of the Premises upon submission of certification of closure to the IEPA. Such landfill gas monitoring shall be in accordance with all applicable IEPA laws and regulations now in effect or as hereafter amended.

c. in its construction, installation, collection, extraction, removal and generation activities, Lessee shall comply with all necessary governmental permits and with all applicable laws and regulations now in effect or as hereafter amended. Lessor must review and approve all permit applications before submission to the IEPA.

d. Lessee shall be solely liable for any property taxes which may be assessed on the leasehold estate. Upon receipt of the real estate tax bill for each year, Lessor shall forward the same to Lessee.

e. Lessee shall provide Lessor with copies of all documents required by the IEPA, including, but not limited to, gas management reports, permit applications, engineering plans and "as built" diagrams. The parties agree that Lessee's engineering plans, "as built" diagrams and filter specifications are proprietary in nature and are exempt from disclosure under the Freedom of Information Act pursuant to 5 ILCS 140/7-(1)(g). Engineering plans, "as built" diagrams and filter specifications are proprietary, and Lessor agrees to obtain approval of Lessee before disclosing such plans to third parties, and if required by Lessee, to obtain confidentiality agreements form such third parties in a form to be supplied by Lessee. However, Lessor may provide any information referred to herein to its Landfill Operator without Lessee's consent, subject to the terms of a separate agreement between Lessee and the Landfill Operator.

f. Lessee shall assume and pay the cost and pay for collection and disposal of leachate for all of the Landfills including costs of the force main system for leachate disposal.

g. Lessee shall, at it's expense, install all wells.

9. **CONFIDENTIAL INFORMATION.** All information acquired by Lessor or anyone on its behalf (including, but not limited to, officers, employees and agents) from any reports, papers or records relating to the subject matter of this Lease shall be treated as confidential information, and the Lessor shall not divulge (and shall cause such person acting on behalf of Lessor not to divulge) such information to anyone without the prior written consent of Lessee, unless required by the order of a court of competent jurisdiction or the Freedom of Information Act (FOIA), 5 ILCS 140/1 et. seq. Lessor agrees to notify Lessee of requested materials prior to providing such information, and Lessee will promptly notify Lessor, so that Lessor can comply with statutory time limits, whether it believes that such information is proprietary in nature.

10. **SPECIAL PROVISIONS.** The Lessee will provide Lessor with relevant gas production data (qualitative and quantitative), permit applications and engineering plans. The Lessor shall consider the information confidential and shall make no disclosure of such information to any other person or entity, except with prior written permission from Lessee, unless required by the order of a court of competent jurisdiction or upon specific request under the Freedom of Information Act (FOIA), 5 ILCS 140/1 et. seq. Lessor agrees to notify Lessee of requested materials prior to providing such information, and Lessee will promptly notify Lessor, so that Lessor can comply with statutory time limits, whether it believes that such information is proprietary in nature.

11. **WAIVER OR BREACH.** No delay or omission to exercise any right or power by either party shall impair any such right or power or be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of a subsequent or continuing breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other part, of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent or approval to any subsequent similar act.

12. **LIENS.** Lessee shall keep the Premises free from any liens arising directly from work performed, materials furnished, or obligations incurred by or at the direction of Lessee and shall indemnify, hold harmless and defend Lessor for any such liens. In the event that Lessee shall not, within sixty (60) days following knowledge of the imposition of any such lien, cause such lien to be released or cause an appropriate bond to be posted or an appropriate payment to be made, then Lessor shall have the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien, and all such sums paid by Lessor shall be payable to Lessor by Lessee.

13. **INSURANCE.** The Lessee or its assignees shall purchase and maintain the following insurance to cover the Lessee's project and operations under this Lease, whether such actions or operations are by itself or by any contractor or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The

insurance coverage provided therein shall continue to be in force until this Lease expires or is terminated.

a. Workers' Compensation and Structural Work Act insurance in full compliance with laws of the State of Illinois, together with Employers' Liability coverage with minimum limits of liability in the amount of $1,000,000.00 for each occurrence.

b. Comprehensive Automobile Liability insurance covering all owned, hired, and non-owned vehicles with the following minimum limits of liability: combined single limit $1,000,000.00.

c. Comprehensive General Liability insurance including independent contractor's coverage with the following minimum limits of liability: Combined single limit $1,000,000.00, each occurrence, $10,000,000.00 aggregate. Beginning in August, 1996, Lessee shall increase the combined single limit coverage to $5,000,000.00 each occurrence. The Lessee's Comprehensive General Liability Policy shall also include blanket contractual liability.

d. Environmental impairment insurance with the following minimum limits of liability: $5,000,000.00 per occurrence for liability, bodily injury and property damage, including cleanup and defense costs.

All insurance shall be issued by a Company or Companies satisfactory to Lessor, and licensed to do business in Illinois. All such insurance policies shall name Lessor as a co-insured. Certificates of insurance evidencing all required insurance shall be supplied to Lessor within thirty (30) days after execution of this

Lease and annually thereafter. These certificates shall provide that thirty (30) days written notice shall be given to Lessor before the insurance policies noted herein are changed or canceled. Lessee shall supply copies of the required policies upon request. Failure to provide certificates of insurance shall entitle Lessor to the remedies upon Paragraph 16 herein.

14. **INDEMNIFICATION.** Lessee shall defend, indemnify, and hold Lessor, its employees, officers and officials harmless from and against any and all claims, penalties, demands, actions, proceedings, liability or losses, of whatever nature (including reasonable attorney's fees) for injury or death to person(s), or for damage or loss to property, including claims for environmental damage, and for suits and judgments for damages and/or fines for violations of any state, federal or local law, easements, conditions and restrictions, but in each case only to the extent arising out of or caused by actions of the Lessee, its subcontractors, employees, servants, agents or contractors in connection with the Premises or any contiguous or non-adjacent property under Lessee's control, and not arising out of or caused by actions or omissions of any other person or entity. Except to the extent that the same arises out of or is caused by the actions of the Lessee, its subcontractors, employees, servants, agents or contractors, Lessor shall defend, indemnify, and hold Lessee, its employees, officers and officials harmless from and against any all claims, penalties, demands, actions, proceedings, liability, or losses of whatever nature (including reasonable attorney's fees) and for suits and judgments and/or fines for violation of any state, federal or local law, easements, conditions and restrictions based upon or arising out of (a) harm to the environment or the

presence of hazardous materials in the soil, ground water or otherwise on, within, under or about the Premises or (b) injury or death to person(s) or for damage or loss to property or for claims, penalties, demands, actions, proceedings, liability or losses of whatsoever nature, arising out of or caused by Lessor's operations or activities, or the operations or activities of its agents, subcontractors, employees, servants or other contractors, in connection with the Premises or any contiguous or non-adjacent property under Lessor's control.

15. **SUCCESSORS AND ASSIGNS.** This Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties. The parties hereto specifically agree that all or any portion of Lessee's interest in this Lease may be assigned to one or more assignees, including for the purposes of complying with and/or benefiting from any past, current or future provision of tax law, including without limitation Section 29 of the Internal Revenue Code and its amendments. Lessee shall provide Lessor with all non-confidential information available to Lessee regarding such assignee(s) as Lessor may reasonably request from Lessee, and shall obtain approval from Lessor prior to such assignment, which approval shall not be unreasonably withheld. Despite any such assignment, Resource Technology Corporation shall remain liable for the performance of the terms and conditions of this Lease, and shall unconditionally guarantee the performance of the terms and conditions of this Lease by its assignee. Lessor shall have no entitlement to, and shall not claim, any portion of any tax credits generated as a result of the business operations by Lessee and/or its assignees at the Premises or in connection with the

Landfill Gas, unless this Lease is abandoned by Lessee or its assigns pursuant to Paragraph 16 herein. In the event that this Lease is abandoned or terminated, Lessor shall have the right to direct Lessee, or its assigns, to assign this Lease, including without limitation the right to tax credits under Section 29 of the Internal Revenue Code and its amendments, to a party of Lessor's choice.

16. **TERMINATION.** If either party or its assigns defaults or persistently fails or neglects to perform any duty or obligations under this Lease, the other party may terminate the Lease by giving written notice of its intention to terminate. If the responsible party fails to correct the default within thirty (30) days after being given notice, the other party may without prejudice to any other remedy, terminate the Lease.

In addition, the following shall also be considered conditions of default with respect to this Lease:

If any material representation made by either party, or in any certificate, notice, demand or request made by either party, in writing and delivered to the other party, pursuant to or in connection with any said documents shall prove to be untrue or incorrect in any manner or respect as of the date made, or

Default in the performance or breach of any covenant contained in this Lease concerning the existence, structure, or financial condition of the Lessee, or

The entry of a decree or order for relief by a Court having jurisdiction in the Premises in respect of the Lessee or its assigns in an involuntary case under the

Federal Bankruptcy Laws, as now or hereafter constituted, or any other applicable Federal or State Bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Lessee or its assigns or for any substantial part of its property, or ordering the winding up or liquidation of its affairs and the continuance of such decree or order unstayed in the effect of a period of sixty (60) consecutive days; or

The commencement by the Lessee or its assigns of a voluntary case under the Federal Bankruptcy Laws as now or hereafter constituted or any other applicable Federal or State Bankruptcy, insolvency or other similar law, or the consent by the Lessee or its assigns to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, (or similar Official) of any substantial party of the Lessee's or its assigns property, or the making of any such entity of any assignment for the benefit of creditors of the failure of the Lessee or its assigns to pay such entities debts as such debts come due, or the taking of action by the Lessee or its assigns in the furtherance of any of the foregoing.

17. **WATER.** Water at the site is not suitable for drinking, and drinking water will provided by Lessee.

18. **REGISTRATION.** Lessee represents and warrants that it is a Delaware Corporation registered with the Secretary of the State of Illinois, pursuant to the laws of the State of Illinois, and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform this Lease. Lessee will do or cause to be done all things necessary

to preserve and keep in full force its existence in good standing as a Corporation authorized to do business in the State of Illinois while this Lease is in effect.

19. **EQUAL EMPLOYMENT OPPORTUNITY.** Lessee agrees to abide by all federal, state or local regulations relative to equal opportunity for all persons, without discrimination as to race, color, sex, religion, national origin, age, or physical and/or mental disability. The Lessee and all contractors and subcontractors further agree to comply with any and all applicable provisions thereof, including the EEO Contract compliance clause, attached hereto as exhibit C and incorporated herein.

20. **OPERATOR AGREEMENT.** Lessee agrees to enter into an agreement with Lessor's Landfill operator which addresses liability, operations and permit issues and comply with said agreement.

21. **NOTICES.** Any notice required or permitted to be given under this Lease shall be in writing, and there shall be deemed to have been sufficient notice and service thereof if such notice is personally delivered or sent by registered or certified mail, postage prepaid, and addressed to the respective addresses stated below, or to such other address or addresses as may hereafter be designated by either party in writing. All notices shall be effective as of the postmark time and date.

The addresses are:

LESSOR:

Dorothy DeSmidt, President

American Grading Company
P.O. Box 253
Lyons, IL 60534

with copy to:

George H. Litow
315 Chicago Road
Paw Paw, IL 61353

LESSEE:

Mr. George B. Calvert, President
Resource, Technology Corp.
401 South LaSalle Street
Suite 1703
Chicago, IL 60605

with copy to:

Terrence W. Stein, Esq.
Freeborn & Peters
311 South Wacker Drive
Chicago, IL 60606

22. **GOVERNING LAW.** This Lease shall be construed in accordance with the laws of the State of Illinois.

23. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties, with respect to the subject matter hereof. No change or modification of this Lease shall be valid unless the same be in writing and signed by the parties. No waiver of any provisions of this Lease shall be valid unless the same

be in writing and signed by the person or party to be charged.

24. **HEADINGS.** The headings in this Lease are inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

WHEREFORE, the parties have entered into this Lease on the date first above written.

"LESSOR"

American Grading Company,
a Delaware corporation

By: /s/_____
Dorothy DeSmidt, President

"LESSEE"

Resource Technology Corp.,
a Delaware corporation

By: /s/_____
George B. Calvert, President

STATE OF ILLINOIS)
)
COUNTY OF Lee) SS.

The foregoing instrument was acknowledged before me this 27 day of December 1995, by George B. Calvert, President, on behalf of Resource Technology Corporation, a Delaware corporation, and by Dorothy DeSmidt, President, on behalf of American Grading Company, a Delaware corporation.

/s/_____
Notary Public
My Commission Expires April 11, 1996
[Seal]

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Case No. 99 B 35434

[Filed February 5, 2007]

In re:	)
	)
RESOURCE TECHNOLOGY CORPORATION,	)
	)
Debtor.	)
	)

Chapter 7
Hon. Eugene R. Wedoff

Hearing Date: February 8, 2007
Hearing Time: 9:30 a.m.

AMERICAN GRADING'S MOTION TO SET TRIAL DATE ON TERMINATION ISSUE AND FOR RELATED RELIEF

American Grading Co. ("American Grading"), by and through its counsel, hereby moves the Court for entry of an order setting a trial date (and related pre-trial dates) on the issue of whether the Lease agreement between the above-captioned debtor (the "Debtor") and American Grading has been terminated. In support of this motion, American Grading states and alleges as follows:

1. As the Court is aware, the Illinois Investment Trust No. 92-7163 and its related entities (collectively, the "Proposed Assignee") seek assignment of the Lease pursuant to their settlement and designation of rights agreement with Jay Steinberg, the Chapter 7 trustee (the "Trustee").

2. The original term of the Lease expired on December 27, 2005. American Grading asserted that the Lease had not been properly renewed for an additional term, and the Court conducted an initial trial on the question of renewal. American Grading's prior counsel in this case terminated its representation of American Grading shortly before this trial and American Grading was unable to retain new counsel prior to the trial date. As a result, American Grading was not represented at the trial and the Proposed Assignee "prevailed" on the renewal issue.

3. The Court then scheduled two additional trial dates with regard to the Lease. First, on April 4, 2007, there will be a trial on the "issue of the totality of financial liabilities that the proposed assignees would have for curing defaults and assuring future performance under the contract to be assumed and assigned. Second, the Court set a trial for May 9, 2007, to address the "question of the proposed assignees' ability to provide adequate assurance of future performance." *See* Trial Order, dated December 28, 2006 (Docket No. 3778).

4. Shortly after the Court set these trial dates, American Grading retained its current counsel, and filed a motion seeking relief from the automatic stay in order to serve the Trustee with a notice of default and intent to terminate the Lease. The Court granted the

motion and, on December 29, 2006, American Grading sent a notice of default and intent to terminate.

5. Paragraph 16 of the Lease provides:

> TERMINATION. If either party or its assigns defaults or persistently fails or neglects to perform any duty or obligation under this Lease, the other party may terminate the Lease by giving written notice of its intention to terminate. If the responsible party fails to correct the default within thirty (30) days after being given notice the other party may without prejudice to any other remedy, terminate the Lease.

6. Because the Trustee was unable to cure the defaults identified in Exhibit A, on January 31, 2007, American Grading sent a second letter to the Trustee notifying him that the Lease had terminated pursuant to ¶ 16 of the Lease.

7. The termination issue is now ripe for adjudication and the Court already ruled that it will decide all matters relating to the scope of the parties' respective rights in the Lease. American Grading therefore requests that the Court set a trial date on the termination issue either prior to or in connection with the April 4th trial date already set.

8. It is important that that the Court set a trial date on the question of termination because this issue is now implicated in the state court receivership proceeding captioned *Banco Panamericano. Inc. v. Resource Technology Corporation,* Case No. 05 CH 22712 ("Receivership Proceeding"). The Secured

Lenders filed an "Emergency Motion to Consolidate Additional Collateral in the Receivership Estate and to Authorize the Receiver to Operate the System at the McCook, Illinois Landfill" (the "Receivership Motion"), seeking, among other things, the authority to enter the McCook landfill and "operate" the system. *See* **Exhibit A**.

9. One of the matters America Grading intends on raising in its response to the Receivership Motion is that the Lease has terminated and thus the secured lenders do not have the right to operate any "system" at the McCook landfill.

WHEREFORE, for the reasons stated herein, American Grading respectfully requests that the Court enter an Order (i) setting the termination issue for trial and establishing related pre-trial deadlines, and (ii) granting American Grading such further relief as is appropriate under the circumstances.

DATED: February 5, 2007

Respectfully submitted,

AMERICAN GRADING CO.

By: /s/ Sara E. Lorber
One of Its Attorneys

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slorber@seyfarth.com

* * *

[Exhibits have been omitted in printing of this appendix]

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Case No. 99 B 35434

[Filed February 8, 2007]

IN RE:	)
	)
RESOURCE TECHNOLOGY CORPORATION,	)
	)
Debtor.	)
	)

Chapter 7
Hon. Eugene R. Wedoff

TRIAL ORDER FOR THE TERMINATION ISSUE RELATING TO AGREEMENT BETWEEN RESOURCE TECHNOLOGY CORPORATION AND AMERICAN GRADING COMPANY

This proceeding having come before the Court on American Grading's Motion to Set Trial Date on Termination issue and for Related Relief (the "Motion"); due notice of the Motion having been given to all parties entitled thereto, and all such parties having had such opportunity for hearing as is appropriate under the circumstances of this case, the Court having reviewed the Motion and being fully advised in the premises, IT IS HEREBY ORDERED:

1. The Motion is granted.

2. The Court will consider at trial the issue of whether the contract to be assumed and assigned has been terminated.

3. The parties shall notice discovery, so that they will complete all discovery on or before March 23, 2007. ERW

4. The parties shall exchange witness and exhibit lists and file the lists with the Court on or before March 26, 2007. All exhibits shall be identified by the numbers proposed to be used at trial. ERW

5. The parties shall not use large format demonstrative evidence if the information can be provided on 8 ½" x 11" paper.

6. Motions in limine or objections to the admission of exhibits shall be filed on or before March 29, 2007. ERW

7. The Court will rule on any such motions on April 4, 2007 at 9:30 a.m. ERW

8. No later than 4:30 p.m. on the day before the trial, all parties shall submit copies of their exhibits to the Court. If the hard copies of a party's exhibits can be contained in a single 3-inch ring binder, the party may submit the exhibits in that manner, with one binder for the judge and a separate binder for the law clerk. If the exhibits cannot be contained in a single 3-ring binder, then the party must submit the exhibits on a CD-ROM, in PDF format, with each exhibit as a separate document, and with bookmarks for major divisions and for any attachments to the exhibit. A party may submit a CD-ROM rather than a binder

even where the volume of exhibits would not require submission of a CD-ROM. Two copies of each CD-ROM must be submitted. Each CD-ROM shall be labeled with the name of the case and the party on whose behalf it is submitted.

9. Any listed exhibits as to which there is no objection will be admitted into evidence at the outset of the hearing.

10. Absent extraordinary circumstances, the examination of each witness shall be limited to direct, cross-examination and re-direct.

11. The trial in this matter shall commence on April 4, 2007 at 9:30 a.m. ERW

[The parties shall continue the status quo as of December 28, 2006 without prejudice to AGC's right to raise issues set forth in its notice sent 12/29/06. ERW]

Dated: FEB 08 2007 ENTERED:

/s/_____
Hon. Eugene R. Wedoff
Chief Bankruptcy Judge